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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,128	07/05/2000	Bruce Kerievsky	1467.006	4622

7590 12/07/2004

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EXAMINER

OUELLETTE, JONATHAN P

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/610,128

Applicant(s)

KERIEVSKY, BRUCE

Examiner

Jonathan Ouellette

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 37-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. The Request filed on 10/5/2004 for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 09/610,128 is acceptable and a RCE has been established. An action on the RCE follows.

### ***Response to Amendment***

2. Claims 1-36 have formally been cancelled, and Claims 37-59 have been added; therefore, Claims 37-59 are currently pending in application 09/610,128.

### ***Claim Rejections - 35 USC § 101***

#### ***Double Patenting***

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).
4. A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope.

The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claims 37-59 are rejected under 35 U.S.C. 101 as claiming the same invention as that of amended claims 1-13 of prior U.S. Patent No. 09/500,599. This is a double patenting rejection.

#### Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 37-39, 45, 47-50, 56, and 58-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Kolawa et al. (US 6,239,974).**
6. As per **independent Claims 37, 38, and 49**, Kolawa discloses a method (apparatus) for providing data related to cooking comprising: providing initial data to a user (initial menu of available information, Fig.1); detecting an utterance from the user (voice-enabled input, C3 L16-18); and providing additional data in response to the (spoken) utterance, wherein the additional data includes data related to food preparation (recipe instructions, C10 L20-57).

7. As per Claims 39 and 50, Kolawa discloses accessing a glossary as a function of detecting an utterance, and providing additional data from the glossary.
8. As per Claims 45 and 56, Kolawa discloses retrieving the data relating to cooking from a remote location.
9. As per Claims 47 and 58, Kolawa discloses wherein the initial data comprises data related to two or more recipes.
10. As per Claims 48 and 59, Kolawa discloses modifying (updating) the additional data as a function of a second utterance.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title; if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. **Claims 40-42 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolawa in view of Metz (Metz, Cade, "Decisions, decisions." PC Magazine, v16, n6, p162(3), March 25, 1997).**

13. As per Claims 40 and 51, Kolawa discloses the use of voice-enabled technology to operate a food preparation assistance system (voice-enabled input, C3 L16-18); however Kolawa fails to disclose initiating a timer as a function of the utterance from the user; and providing an indication at an expiration of a time interval associated with the timer.

14. Metz discloses the use of a timer (five timers) integrated into a food preparation assistance system (Metz, Cade, "Decisions, decisions." PC Magazine, v16, n6, p162(3), March 25, 1997).
15. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included initiating a timer as a function of the input from the user; and providing an indication at an expiration of a time interval associated with the timer, as disclosed by Metz in the system disclosed by Kolawa, for the advantage of providing a method (apparatus) for providing data related to cooking, with the ability to increase food preparation assistance to the customer, by providing multiple food preparation tools (timer, videos, etc.).
16. As per Claims 41 and 52, Kolawa and Metz disclose initiating a second time as a function of the utterance from the user; and providing a second indication at an expiration of the time interval associated with the second timer.
17. As per Claims 42 and 53, Kolawa and Metz disclose wherein the timer is associated with a particular segment of the data related to cooking.
18. **Claims 43-44 and 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolawa.**
19. As per Claims 43 and 54, Kolawa fails to disclose translating at least a portion of the data relating to cooking from a first language into a second language; and providing the translated portion to the user.

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20. However, Kolawa does disclose providing recipes from several cultures (C7 L15-20, C10 L20-57), and it would have been obvious to one of ordinary skill in the art to provide translated foreign recipes in order to broaden the cultural selection of available recipes.
21. As per Claims 44 and 55, Kolawa and Metz fail to disclose converting a portion of the data relating to cooking from a first unit of measurement to a second unit of measurement.
22. However, Kolawa does disclose providing food preparation instructions to the user (C10 L20-57), and it would have been obvious to one of ordinary skill in the art for the system to provide measurement conversions depending on the measurement system used by the user (metric vs. U.S. customary units).
- 23. Claims 46 and 57 are rejected under 35 U.S.C. 103 as being unpatentable over Kolawa.**
24. As per Claims 46 and 57, Kolawa does not expressly show transmitting the data related to cooking to a hand-held device.
25. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The cooking information system would be performed regardless of the where the information was transmitted. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
26. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have transmitted the cooking information to a hand-held device,

because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

***Response to Arguments***

27. Applicant's arguments with respect to claims 37-59 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

28. Additional Non-Patent Literature has been referenced on the attached PTO-892 form, and the Examiner suggests the applicant review these documents before submitting any amendments.

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (703) 605-0662. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.

30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-3597 for After Final communications.

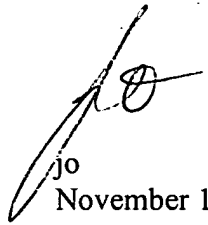
31. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5484.



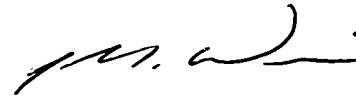
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A handwritten signature in black ink, appearing to be "Jo".

Jo  
November 17, 2004

A handwritten signature in black ink, appearing to be "John G. Weiss".

JOHN G. WEISS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600